IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.570 OF 2006
IN
NOTICE OF MOTION NO.2832 OF 2006
IN
L.C.SUIT NO.3302 OF 2006
WITH
CIVIL APPLICATION NO.737 OF 2006

Smt.Lilavati @ Tarabai Krishna Pilke ...Appellant

Versus

Municipal Corpn.for Gr.Mumbai ...Respondent

.....

Mr.Ramesh R.Shinde for Appellant.

Mrs.Geeta Joglekar for Respondent.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 10, 2006.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mrs.Joglekar waives notice for Respondent Corporation.

3. As short question is involved, Appeal is taken up for final disposal forthwith, by consent.

4. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court, Mumbai dated 26th July 2006 on Notice of Motion No.2832 of 2006 in L.C.Suit No.3302 of 2006. By this order, the Court below has refused to grant ad-interim relief as prayed by the Appellant/Plaintiff during the pendency of the Notice of Motion. The reason that has been noted is that the suit structure appears to be an extention of the structure of Shri.Pilke Shankar Sakharam, who has obtained decree in Suit No.5121 of 2002. Even so, the question is: whether the Corporation can proceed to take action with regard to the suit structure without following due procedure of law, which is the limited relief claimed in the Suit.

5. It is asserted by the Plaintiff that he has not received any notice so far with regard to the suit structure, but had filed the Suit on the basis of apprehension in view of the threat given by the Officers of the Corporation as noted in Paragraph 7 of the Plaint. In such a Suit,

granting of ad-interim relief, especially when the existence of structure is not disputed, will be necessary to preserve the property till the Notice of Motion is heard and disposed of.

6. It is well established that even if the Corporation intends to take action against the unauthorised structure, that can be done only by following due process of law. If that interim protection is sought by the Plaintiff, there is no reason to deny that limited protection unless the Corporation was to place on record the fact that due process of law has already been followed in respect of the suit structure. Counsel for the Corporation is not in a position to authoritatively state that due process of law has already been followed in respect of the suit structure. If it is so, prayer for ad-interim relief as pressed by the Plaintiff will have to be accepted. Hence this Appeal succeeds. The impugned Judgment and Order is set-aside, instead, ad-interim relief in terms of prayer clause (a) of the Notice of Motion is granted to continue till the disposal of the Notice of Motion.

7. It is made clear that it will be open to the Corporation to place on record relevant material, in case, due process of law has already been followed in respect of the suit structure. In any other situation, the Corporation will have to make statement before the Court that they will follow due process of law, which will dispose of the main prayer in the Suit itself.

8. Appeal and the cognate Civil Application disposed of with the above observations. No order as to costs.

A.M.KHANWILKAR, J.